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DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

(T.D. 76–2)

Articles Conditionally Free, Subject to a Reduced Rate, etc.—Customs Regulations amended

Part 10 of the Customs Regulations, establishing a procedure for the duty-free entry of certain merchandise from designated beneficiary developing countries

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 10 — ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Title V of the Trade Act of 1974 (Public Law 93–618, 88 Stat. 1978), hereinafter referred to as the "Trade Act", authorizes the President to establish a Generalized System of Preferences (GSP) which would permit the duty-free entry of eligible merchandise arriving directly from designated "beneficiary developing countries." Section 503(b) of the Trade Act, relating to the requirements which must be met for eligible merchandise to receive duty-free treatment, authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary to carry out the provisions of that subsection.

In accordance with sections 503(a) and 131(a) of the Trade Act, a notice by the President was published in the FEDERAL REGISTER on March 26, 1975 (40 FR 13456), listing the articles which will be considered for designation as eligible articles for purposes of the Generalized System of Preferences. The notice also included a list of countries which were designated by Executive Order 11844 of March 24, 1975 (40 FR 13295), pursuant to sections 502(a)(1) and 503(a) of the Trade Act, as beneficiary developing countries and countries under consideration for designation as beneficiary developing countries.

In order to designate additional beneficiary developing countries and eligible articles, and to implement the Generalized System of Preferences, the President signed Executive Order 11888 on November 24, 1975. This Executive Order, which was published in the FEDERAL REGISTER on November 26, 1975 (40 FR 55276), superseded Executive Order 11844 of March 24, 1975.

On October 28, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 50045) by the U.S. Customs Service, Department of the Treasury, which proposed to amend Part 10 of the Customs Regulations (19 CFR Part 10), by establishing a procedure for the duty-free entry of certain merchandise from designated beneficiary developing countries.

The amendments to Part 10 of the Customs Regulations set forth requirements and procedures for the free entry of eligible merchandise from beneficiary developing countries. The amendments would require the submission of evidence of the country of origin and, if it is determined to be necessary by the appropriate district director of Customs, proof that the merchandise was imported directly from the beneficiary developing country. If the district director is satisfied from other evidence that the merchandise clearly qualifies for duty-free treatment under the Generalized System of Preferences, he would be authorized to waive production of proof of direct shipment.

The amendments further provide that eligible merchandise may qualify for duty-free entry under the Generalized System of Preferences only if the sum of the cost or value of the materials produced in the beneficiary developing country plus the direct costs of processing operations performed there are at least 35% of the final appraised value of the merchandise. In the case of eligible merchandise produced by 2 or more countries which are members of an association of countries treated as one country under section 502(a)(3) of the Trade Act, the percentage of the cost or value of the materials produced in those countries plus the direct costs of processing operations performed there must be at least 50% of the final appraised value. The amendments also explained the procedure used in computing the cost or value of materials and the direct costs of processing operations.

Interested persons were given until November 28, 1975, to submit relevant data, views, or arguments regarding the proposals set forth in the notice of proposed rulemaking. After consideration of the comments received, the following changes were made to the proposals:

1. Proposed section 10.172 is amended to provide that a written claim for duty-free entry shall be filed on the entry document by placing the symbol "A" as a prefix to the Tariff Schedules of the

United States Annotated item number for each article for which such treatment is claimed.

2. Proposed section 10.173(a)(1) is amended by the addition of the title "the Generalized System of Preferences" to the Certificate of Origin Form A. The section is further amended to provide that the Certificate of Origin must be properly completed. However, inasmuch as the instructions on the form are incorrect, the phrase "in accordance with the instructions provided on the form", has been deleted. Additional instructions are to be issued to each of the beneficiary developing countries for the completion of Form A.

3. Proposed section 10.173(a)(3) is amended by deleting the requirement for redelivery of the merchandise for failure to furnish the Certificate of Origin within 60 days after entry, or such additional period as the district director may allow for good cause shown.

4. Proposed section 10.173(a)(5) is amended to provide that the district director may waive production of a Certificate of Origin in the case of articles for personal or household use which are not intended for resale or brought in for the account of others and in other cases until March 31, 1976, when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the Generalized System of Preferences.

5. Proposed section 10.175 has been amended by the addition of a new paragraph (c) to the definition of "imported directly", to allow, under certain conditions, eligible articles to qualify for treatment under GSP where they have been introduced into a free trade zone in a beneficiary developing country.

6. Proposed section 10.177(c) (2) is amended by providing that the formula used for determining the cost or value of material which is provided to the manufacturer without charge shall also apply where the material is provided at less than fair market value.

In addition to the above changes, a number of editorial corrections have been made in the text of the provisions originally proposed.

Accordingly, Part 10 of the Customs Regulations (19 CFR Part 10) is amended by adding a new centerhead and sections 10.171 through 10.178 to read as set forth below.

Executive Order 11888 dated November 24, 1975, which was published by the President in the FEDERAL REGISTER on November 26, 1975 (40 FR 55276), provided that the implementation of the Generalized System of Preferences shall be effective on January 1, 1976. In addition, it is desirable to make the benefits of this system available to the public as soon as possible. Therefore, good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

United States Annotated Item number for each article for which such treatment is claimed.

2. Proposed section 10.173(a)(1) is amended by the addition of the title "the Generalized System of Preferences" to the Certificate of Origin Form A. The section is further amended to provide that the Certificate of Origin must be properly completed. However, inasmuch as the instructions on the form are incomplete, the phrase "in accordance with the instructions provided on the form", has been deleted. Additional instructions are to be issued to each of the beneficiary developing countries for the completion of Form A.

3. Proposed section 10.173(a)(2) is amended by deleting the requirement for redelivery of the merchandise for failure to furnish the Certificate of Origin within 60 days after entry, or such additional period as the district director may allow for good cause shown.

4. Proposed section 10.173(b) is amended to provide that the district director may waive production of a Certificate of Origin in the case of articles for personal or household use which are not intended for sale or brought in for the account of others and in other cases until March 31, 1976, when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the Generalized System of Preferences.

5. Proposed section 10.175 has been amended by the addition of a new paragraph (c) to the definition of "imported directly" to allow, under certain conditions, certain articles to qualify for treatment under GSP where they have been introduced into a free trade zone in a beneficiary developing country.

6. Proposed section 10.177(c)(2) is amended by providing that the formula used for determining the cost or value of materials which is provided to the manufacturer without charge shall also apply when the material is provided at less than fair market value.

In addition to the above changes, a number of editorial corrections have been made in the text of the provisions as originally proposed.

Accordingly, Part 10 of the Customs Regulations (19 CFR Part 10) is amended by adding a new centerhead and sections 10.171 through 10.178 to read as set forth below.

Executive Order 11888 dated November 24, 1975, which was published by the President in the Federal Register on November 26, 1975 (40 FR 55276), provided that the implementation of the Generalized System of Preferences shall be effective on January 1, 1976. In addition, it is desirable to make the benefits of the system available to the public as soon as possible. Therefore, good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

Effective date. These amendments shall be effective with respect to articles that are both (1) imported, and (2) (a) entered for consumption or (b) withdrawn for consumption on or after January 1, 1976.

(ADM-9-03)

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved December 23, 1975,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER December 31, 1975 (40 FR 60047)]

PART 10 — ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Part 10 of the Customs Regulations (19 CFR Part 10) is amended by the insertion of a new centerheading and sections 10.171 through 10.178 to read as follows:

GENERALIZED SYSTEM OF PREFERENCES

§ 10.171 General.

(a) *Statutory authority.* Title V of the Trade Act of 1974 (19 U.S.C. 2461–2465) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary developing countries. Beneficiary developing countries and articles eligible for duty-free treatment are designated by the President by Executive order in accordance with sections 502(a)(1) and 503(a) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1), 2463(a)).

(b) *Country defined.* For purposes of sections 10.171 through 10.178, except as otherwise provided in section 10.176(a), the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, the President may by Executive order provide that all members of such association other than members which are barred from designation under section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) shall be treated as one country for purposes of sections 10.171 through 10.178.

599-727—76——2

§ 10.172 Claim for exemption from duty under the Generalized System of Preferences.

A claim for an exemption from duty on the ground that the Generalized System of Preferences applies shall be allowed by the appropriate district director only if he is satisfied that the requirements set forth in this section and sections 10.173 through 10.178 have been met. A written claim for duty-free entry shall be filed on the entry document by placing the symbol "A" as a prefix to the Tariff Schedules of the United States Annotated item number for each article for which such treatment is claimed.

§ 10.173 Evidence of the country of origin.

(a) *Shipments valued in excess of $250.*

(1) *Certificate of Origin.* Except as provided in subparagraph (5) of this paragraph, the importer or consignee of a shipment of eligible merchandise valued in excess of $250 shall file with the district director at the time of entry the Generalized System of Preferences Certificate of Origin Form A, as evidence of the country of origin. Form A shall be signed by the exporter of the merchandise in the country from which it is directly imported, certified by the designated governmental authority in that country, and properly completed.

(2) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director will accept at the time of entry a duplicate Certificate of Origin issued by the appropriate governmental body in the country of origin and endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date.

(3) *Release under bond.* If the required Certificate of Origin properly completed, or a duplicate thereof as described in subparagraph (2) of this paragraph, is not produced at the time of entry, the entry shall be accepted, subject to compliance with the requirements set forth in section 10.172 and sections 10.174 through 10.178, only if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the Certificate of Origin. The bond shall be in the amount required under section 113.14 of this chapter. Within 60 days after such entry, or such additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to the district director the Certificate of Origin. If the Certificate of Origin is not delivered

to the district director within 60 days of the date of entry or such additional period as may be allowed by the district director for good cause shown, liquidated damages shall be assessed in the full amount of the bond given on Customs Form 7551. When the transaction has been charged against a bond given on Customs Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence if the merchandise had been released under a bond given on Customs Form 7551.

(4) *Verification of evidence.* Evidence of the country of origin required under this paragraph shall be subject to such verification as the district director deems necessary.

(5) *Waiver of Certificate of Origin.*

(i) The district director may waive production of a Certificate of Origin only in the case of articles for personal or household use which are not intended for resale or brought in for the account of others, when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the Generalized System of Preferences.

(ii) Until March 31, 1976, the district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the Generalized System of Preferences.

(b) *Shipments valued at $250 or less.* Although the filing of a Certificate of Origin, is not required for shipments valued at $250 or less, the district director may require such other evidence of the country of origin as he deems necessary.

§ 10.174 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in section 10.175. Any evidence of direct shipment required by the district director shall be subject to such verification as he deems necessary.

(b) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when he is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise clearly qualifies for treatment under the Generalized System of Preferences.

to the district director within 60 days of the date of entry or such additional period as may be allowed by the district director for good cause shown, liquidated damages shall be assessed in the full amount of the bond given on Customs Form 7551. When the transaction has been charged against a bond given on Customs Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence if the merchandise had been released under a bond given on Customs Form 7551.

(4) *Verification of evidence.* Evidence of the country of origin required under this paragraph shall be subject to such verification as the district director deems necessary.

(5) *Waiver of Certificate of Origin.*

(i) The district director may waive production of a Certificate of Origin only in the case of articles for personal or household use which are not intended for resale or brought in for the account of others, when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the Generalized System of Preferences.

(ii) Until March 31, 1976, the district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the Generalized System of Preferences.

(b) *Shipments valued at $250 or less.* Although the filing of a Certificate of Origin is not required for shipments valued at $250 or less, the district director may require such other evidence of the country of origin as he deems necessary.

§ 10.174 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in section 10.175. Any evidence of direct shipment required by the district director shall be subject to such verification as he deems necessary.

(b) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when he is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise clearly qualifies for treatment under the Generalized System of Preferences.

§ 10.175 Imported directly defined.

Eligible articles shall be imported directly from a beneficiary developing country to qualify for treatment under the Generalized System of Preferences. For purposes of sections 10.171 through 10.178 the words "imported directly" mean:

(a) Direct shipment from the beneficiary country to the United States without passing through the territory of any other country; or

(b) Except as provided in paragraph (c) of this section, if shipped from a beneficiary developing country to the United States through the territory of any other country, the merchandise shall not have entered into the commerce of any other country while en route to the United States, and the invoices, bills of lading, and other documents connected with the shipment shall show the United States as the final destination; or

(c) If shipped from the beneficiary developing country to the United States through a free trade zone in a beneficiary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and

(1) The eligible articles must not undergo any operation other than:

(i) Sorting, grading, or testing,

(ii) Packing, unpacking, changes of packing, decanting or repacking into other containers,

(iii) Affixing marks, labels, or other like distinguishing signs on articles or their packing, if incidental to operations allowed under this section, or

(iv) Operations necessary to ensure the preservation of merchandise in its condition as introduced into the free trade zone.

(2) Merchandise may be purchased and resold, other than at retail, for export within the free trade zone.

(3) The Certificate of Origin issued by the designated beneficiary developing country of origin shall state in column 12, that the eligible articles comply with the origin requirements for goods exported to the United States under the Generalized System of Preferences. Column 2 of the Certificate of Origin shall include the name of the consignee in the United States or in the free trade zone.

(4) The certifying authority in the designated beneficiary developing country maintaining the free trade zone shall issue a Certificate of Origin Form A, declaring what operations were performed within the free trade zone. The original Certificate of Origin

issued in the beneficiary developing country of origin shall be retained by the designated authority in the country maintaining the free trade zone and a copy thereof shall be furnished to the United States importer.

(5) For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such articles having entered into the commerce of the country maintaining the free trade zone.

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in one beneficiary developing country.* Merchandise which is the growth, product, manufacture, or assembly of a beneficiary developing country and which is imported directly from such beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences only if the sum of the cost or value of the materials produced in the beneficiary developing country, plus the direct costs of processing operations performed in such country, is not less than 35% of the value of the article as appraised in accordance with section 402 or 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). For purposes of this paragraph, the term "country" does not include an association of countries which is treated as one country under section 10.171(b), but does include a country which is a member of any such association.

(b) *Merchandise produced in two or more countries which are members of an association.* Merchandise which is the growth, product, manufacture, or assembly of two or more countries which are members of an association of countries treated as one country under section 502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3)) and section 10.171(b), and which is imported directly from a member country, may qualify for duty-free treatment under the Generalized System of Preferences only if the sum of the cost or value of the materials produced in such countries, plus the direct costs of processing operations performed in such countries, is not less than 50% of the value of the article as appraised in accordance with section 402 or 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

(c) *Merchandise grown, produced, or manufactured in a beneficiary developing country.* Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country under section

502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3)) and section 10.171(b), and manufactured products consisting of materials produced only in such country or countries, shall normally be presumed to meet the requirements set forth in this section.

§ 10.177 Cost or value of materials produced in the beneficiary developing country.

(a) *"Produced in the beneficiary developing country" defined.* For purposes of sections 10.171 through 10.178, the words "produced in the beneficiary developing country" refer to the constituent materials of which the eligible article is composed which are either:

(1) Wholly the growth, product, or manufacture of the beneficiary developing country; or

(2) Substantially transformed in the beneficiary developing country into a new and different article of commerce.

(b) *Questionable origin.* When the origin of an article either is not ascertainable or not satisfactorily demonstrated to the appropriate district director, the article shall not be considered to have been produced in the beneficiary developing country.

(c) *Determination of cost or value of materials produced in the beneficiary developing country.*

(1) The cost or value of materials produced in the beneficiary developing country includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material lost), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by the beneficiary developing country, or an association of countries treated as one country, provided they are not remitted upon exportation.

(2) Where the material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, manufacture or assembly of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of the materials is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

§ 10.178 Direct costs of processing operations performed in the beneficiary developing country.

(a) *Items included in the direct costs of processing operations.* As used in section 10.176, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to:

(1) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1624, 2463(b))

(T.D. 76-3)

Countervailing duties—Leather handbags from Brazil

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production or exportation of leather handbags from Brazil

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 159 — LIQUIDATION OF DUTIES

On June 30, 1975, a "Notice of Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (40 FR 27499). The notice indicated that it had been determined tentatively that benefits from five programs were conferred by the Brazilian government upon the manufacture, production, or exportation of leather handbags, which constitute a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act"). Two programs were determined tentatively not to be bounties or grants within the meaning of the Act. All other allegations contained in the petition were found not to be applicable to the manufacturers/exporters of leather handbags from Brazil. The notice provided interested parties 30 days from the date of publication to submit relevant data, views, or arguments, in writing, with respect to the preliminary determination. The time period was later extended to September 3, 1975 (40 FR 34423).

After consideration of all information received, it is determined that exports of leather handbags from Brazil are subject to bounties or grants within the meaning of section 303 of the Act. One program concerning exemptions for certain imports from import duties which tentatively was found to be a bounty or grant is determined not to be applicable to Brazilian manufacturers/exporters of leather handbags. All other conclusions reached in the preliminary determination remain unchanged and are adopted in this final determination.

In accordance with section 303, of the Act, the net amount of the bounty or grant has been estimated and declared to be 14 percent of the f.o.b. or ex-works price to the United States of leather handbags from Brazil.

Effective on or after the date of publication of this notice in the FEDERAL REGISTER and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable leather handbags imported directly or indirectly from Brazil, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it has been or can be established to the satisfaction of the Commissioner of Customs that imports of leather handbags from Brazil manufactured by a particular firm are subject to a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected on imports of such handbags.

To be eligible to establish that a particular firm receives a bounty or grant smaller than that estimated in the above declaration, such firm must request, within thirty days from publication of this notice in the FEDERAL REGISTER, that liquidation of all entries for consumption or withdrawal from warehouse for consumption of such dutiable leather handbags from Brazil be suspended pending declarations of the net amounts of the bounties or grants paid. Only pursuant to such a request will liquidation be suspended.

Any merchandise subject to the terms of this order shall be deemed to have benefitted from a bounty or grant if such bounty or grant has been or will be, credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of leather handbags manufactured in Brazil.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting in the column headed "Commodity", the words "Leather Handbags" after the last entry for Brazil. The column headed "Treasury Decision" is amended by inserting the number of this Treasury Decision, and the column headed

"Action" is amended by inserting the words "Bounty Declared – Rate".

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2050; 19 U.S.C. 66, 1303, as amended, 1624).

(APP–4–05)

VERNON D. ACREE,
Commissioner of Customs.

Approved December 29, 1975,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER January 12, 1976 (41 FR ——)]

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4619)

POLLARD BEARINGS CORPORATION *v.* UNITED STATES

Integral shaft bearings

At the most, Government's alternative claim as ball or roller bearings, if properly established, can negate plaintiff's contrary claims, but does not entitle the Government to have an affirmative judgment, as it merely results in the overruling of plaintiff's claims without affirming the customs classification. *Herrmann & Jacobs, Inc.* v. *United States*, 29 CCPA 279, C.A.D. 203 (1942).

The burden of proof upon the Government's alternative claim is upon the Government. *United States* v. *White Sulphur Springs Co.*, 21 CCPA 203, T.D. 46728 (1933); *Packard Instrument Co. et al.* v. *United States*, 60 CCPA 66, 68, C.A.D. 1082, 471 F. 2d 636 (1973).

Integral shaft bearings designed to cope with support stresses on the shaft as well as friction are more than ball or roller bearings designed, without an integral shaft, to convert sliding friction into rolling friction.

HELD. Upon consideration of the argument and record in this case, integral shaft bearings should be classified as parts of piston-type engines under TSUS item 660.52.

Court No. 70/61480–17287–70

Port of New York

[Judgment for plaintiff.]

(Decided on remand [C.A.D. 1146] December 15, 1975)

Donohue and Donohue (*John P. Donohue* and *James A. Geraghty* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Andrew P. Vance* and *Robert B. Silverman*, trial attorneys), for the defendant.

LANDIS, Judge: This case, involving the classification of integral shaft bearings as parts of pumps for liquids under TSUS item 660.90, is here on remand from the United States Court of Customs and Patent Appeals. *Pollard Bearings Corporation* v. *United States*, 62 CCPA—, C.A.D. 1146, 511 F. 2d 568 (1975). The appeals court held that the imported integral shaft bearings were "more than" parts for automobile water pumps and reversed this court's decision sustaining the customs classification of the integral shaft bearings as pump parts under TSUS item 660.90. *Pollard Bearings Corporation* v. *United States*, 71 Cust. Ct. 1, C.D. 4461, 363 F. Supp. 1191 (1973). Remand was ordered to provide this court the opportunity to express its views on the issues raised by the claims on both sides with respect to the proper classification of integral shaft bearings under TSUS other than as pump parts.

On remand, therefore, I am brought to consider plaintiff's claims that integral shaft bearings should be classified either under TSUS item 660.52 as parts of piston-type engines, or under item 692.25, as parts of motor vehicles. Both those items specify a duty rate of 8.5 per centum ad valorem. Also, before me for consideration is defend-

ant's alternative claim tactically [1] alleging that integral shaft bearings that are not pump parts cannot be classified as parts of engines or motor vehicles because integral shaft bearings are specifically provided for in the provision under TSUS item 680.35 for ball or roller bearings, dutiable at 3.4 cents per pound plus 15 per centum ad valorem.[2]

The gist of defendant's memorandum arguing the item 680.35 claim is that as commonly understood, and as Congress understood, the term "ball or roller bearings" included integral shaft bearings. However, as between plaintiff's claimed provisions, defendant notes that the tariff provision for parts of piston-type engines (item 660.52) covers integral shaft bearings more specifically than does the tariff provision for parts of motor vehicles (item 692.25)[3] and if plaintiff is to prevail the court should grant judgment for plaintiff based on item 660.52 rather than item 692.25.[4] Plaintiff is not inclined to differ with defendant's latter assessment.

In this case, both sides have directed their strongest argument [5] to the questions posed by defendant's contention that when Congress specifically provided for "ball or roller bearings" in TSUS item 680.35, it understood the common meaning of the term to include integral shaft bearings and that merchandise such as that imported should be classified under item 680.35. However, upon consideration of the record and argument I conclude that the term "ball or roller bearings," in the common meaning used by Congress in TSUS item 680.35,[6] did not include integral shaft bearings.

Defendant agrees that "ball or roller bearings," as commonly understood, consist of (1) a set of rolling elements, (2) an outer ring or shell, and (3) an inner ring, which function to convert sliding friction into rolling friction. Integral shaft bearings, as the record attests, consist of (1) a set of rolling elements, (2) an outer ring but no inner ring. Grooves cut into the integral shaft eliminate the

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[1] Tactically because if defendant's alternative claim is properly established it can negate plaintiff's contrary claims but does not entitle defendant to have an affirmative judgment as it merely results in the overruling of plaintiff's claims without affirming the customs classification. *Herrmann & Jacobs, Inc.* v. *United States*, 29 CCPA 279, C.A.D. 203 (1942).

[2] TSUS provides as a matter of law:

10. General Interpretative Rules. For the purposes of these schedules—

* * * * * * * *

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, *but does not prevail over a specific provision for such part.* [Emphasis added.]

[3] Defendant's memorandum on remand, page 3 footnote.

[4] In customs classification, merchandise covered by either of two tariff provisions is classifiable under the provision that is relatively more specific and definite. *United States* v. *Simon Saw & Steel Company*, 51 CCPA 33, C.A.D. 834 (1964).

[5] Both sides replied to each others supporting memoranda.

[6] *Sears, Roebuck and Co.* v. *United States*, 46 CCPA 79, C.A.D. 701 (1959).

necessity for a separate inner ring. Witnesses for both sides, as defendant points out, offered differing opinions as to whether the term "ball or roller bearings" in common meaning included integral shaft bearings. The testimony is, therefore, not helpful to the court and I give it no weight.[7] Defendant, on the evidence in this record, having failed to make out a case for classification under item 680.35, although the burden of proof rested on it to do so,[8] proceeds to argue that lexicons and the legislative history associated with the amendment that changed the provision "Ball or roller bearings, and parts thereof" to read "Ball or roller bearings, including such bearings with integral shafts, and parts thereof." [9] support its position that in common meaning, and as Congress understood, the term "Ball or roller bearings" included integral shaft bearings.

The definitions cited by defendant [10] do mention that in a ball bearing the "shaft" or "journal" turns or works upon rings of balls that convert sliding friction into rolling friction. But none of the definitions specifically imply that the shaft or journal is integral.[11] To me, it is more significant that Congress has provided for ball or roller bearings in tariff acts as far back as the Tariff Act of 1909 and that at some relevant time Congress must have become aware that in the tariff sense:

> * * * Antifriction bearings consist of metal balls or rollers fitted between two metal cases in such a way that a shaft may be

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[7] Common meaning is a question of law. Evidence as to common meaning may be helpful but is only advisory to the court. *United States* v. *C. J. Tower & Sons of Buffalo, N. Y.*, 48 CCPA 87, C.A.D. 770 (1961).

[8] *United States* v. *White Sulphur Springs Co.*, 21 CCPA 203, T.D. 46728 (1933); *Packard Instrument Co. et al.* v. *United States*, 60 CCPA 66, 68, C.A.D. 1082, 471 F. 2d 636 (1973).

[9] TSUS did not on the dates covered by the entries in this case specifically provide for integral shaft bearings. Subsequent to these importations, in late 1965, Congress in the Technical Amendments Act of 1965, 79 Stat. 933, 940, amended the heading "Ball or roller bearings, and parts thereof" to read "Ball or roller bearings, including such bearings with integral shafts and parts thereof." Ball bearings with integral shafts are presently identified in TSUS as item 680.33.

[10] Defendant cites the following definitions:

Funk & Wagnall's New "Standard" Dictionary of the English Language (1956), at p. 215:

A bearing in which the *shaft* at its points of support rests upon or is surrounded by small balls that turn freely as the shaft revolves.

Webster's Third New International Dictionary, Unabridged (1963), at p. 167:

A bearing in which the *Journal* turns upon loose hardened steel balls that roll easily in a race and thus convert sliding friction into rolling friction.

Audels' New Mechanical Dictionary (1960), at p. 53:

A bearing whose *Journal* works upon rings of balls, which roll easily in their grooves or races. Friction upon a series of points is thus substituted for that upon a surface, thus eliminating a considerable amount of total friction. . . . [Emphasis added.]

Chamber's Technical Dictionary (1953), at p. 73:

A *shaft* bearing consisting of a number of hardened steel balls which roll between an inner race forced onto the *shaft* and an outer race carried in a housing. . . . [Emphasis added.]

[Defendant's memorandum, pages 3–4.]

[11] Integral means: "1. Constituting a completed whole. 2. Constituting an essential part of a whole necessary for completeness; intrinsic * * *" (*Funk & Wagnalls Standard Dictionary of the English Language*, International Edition (1963)).

> inserted into the inner case, and the outer case into the bearing frame, the contact between the two cases being through balls or rollers. This arrangement substitutes a rolling contact for the sliding contact of the ordinary bearing and thus reduces friction.
>
> The automobile industry is the largest consumer of ball and roller bearings; the bicycle affords examples of the use of the former variety. Some antifriction bearings are used in screw-jacks, many machine tools, elevators, etc. [United States Tariff Commission, *Dictionary of Tariff Information* (1924), page 35.]

In the historical tariff sense, therefore, a shaft was not commonly understood as necessary to the completeness of a ball or roller bearing that is designed in a way that a shaft may be inserted into the inner case or ring. The shaft, on the other hand, is intrinsic to the completeness of an integral shaft bearing. Physically and functionally, because of the shaft, I find that an integral shaft bearing is more than a ball bearing: (1) Physically, because in common meaning the term "ball bearing" does not include a shaft, (2) functionally, because on this record, as the court of appeals found, the integral shaft bearings are designed in accordance with the stresses resulting from the automobile fan supporting and the rotating function rather than from the stresses resulting from the automobile water impeller supporting and the rotating function of the bearing. There is no evidence that ball or roller bearings that functionally cope with friction are also designed to handle support stresses.

Defendant to the contrary, I am of the opinion that when Congress, in 1965, amended the provision "Ball or roller bearings" to read "Ball or roller hearings, including such bearings with integral shafts," it did so not to merely clarify an understanding that the term "ball or roller hearings" commonly included integral shaft bearings, *Velan Steam Spec. & Velan Valve Corp.* v. *United States*, 57 CCPA 58, C.A.D. 976, 420 F. 2d 1399 (1970); *United States* v. *Geo. Wm. Rueff, Inc.*, 41 CCPA 95, C.A.D. 535 (1953), but to create a "specific category for ball bearings with integral shafts" at the same rate (12 per centum ad valorem) which the Customs Service applied when it classified shaft bearings as a "pump part,"[12] rather than as ball or roller bearings. Also, creating a specific category for integral shaft bearings, administratively classified as pump parts in this case, strikes me as a legislative admission that in common meaning the term "ball or roller bearings" did not include integral shaft bearings, *Westfeldt Brothers* v. *United States*, 36 Cust. Ct. 112, 118, C.D. 1760 (1956); *Sears, Roebuck & Co.* v. *United States*, 2 Ct. Cust. Appls. 451, 453–54,

[12] 2 U.S. Code Cong. & Admin. News 1965, pages 3416, 3443.

T.D. 32203 (1912); *Thalson Co.* v. *United States*, 64 Cust. Ct. 418, C.D. 4011 (1970); *A. F. Burstrom* v. *United States*, 36 Cust. Ct. 46, 50, C.D. 1752 (1956), *aff'd* 44 CCPA 27, C.A.D. 631 (1956); *John Horvath Company* v. *United States*, 59 Cust. Ct. 397, 404, C.D. 3174, 274 F. Supp. 986 (1967). The court is also not aware that Congress has ever, in a clarifying amendment, specified a rate of duty (for the article clarifyingly included in the original provision) different from the duty rate originally specified in the original provision. *Cf. Ralph C. Coxhead Corp.* v. *United States*, 22 CCPA 96, 101, T.D. 47080 (1934). Also, if Congress intended to merely clarify that the superior heading "ball or roller bearings" necessarily included such bearings with integral shafts, then it seems odd that the inferior headings under the alleged clarifying amendment would provide different rates of duty for ball bearings with integral shafts and other bearings.

Defendant, as previously stated, except for its claim as ball or roller bearings, has expressed the opinion that, on this record, integral shaft bearings are classifiable under item 660.52 as parts of piston-type engines. Plaintiff, while recognizing that it is the province of the court to decide the proper classification of integral shaft bearings, agrees. Integral shaft bearings, as above noted, are currently specifically provided for in TSUS. Plaintiff's alternative claims under items 660.52 and 692.25 both specify a duty rate of 8.5 per centum ad valorem. Defendant having conceded that item 660.52 is relatively more specific as to the imported integral shaft bearings than is item 692.25, I hold that the imported integral shaft bearings should be classified under item 660.52.

Judgment will be entered accordingly.

(C.D. 4620)

ARNOLD PICKLE & OLIVE CO. *v.* UNITED STATES

Vegetables in brine

EXPORT VALUE—COST OF PACKING

The absence of proof of the cost of inspecting and grading cucumbers sold by Mexican farmers and exported from Mexico (after being placed in brine by the importer's agent) prevented the completion of a method of proof of export value consisting of proof of the export price of the cucumbers plus proof of the packing costs.

EXPORT VALUE—VEGETABLES PACKED IN BRINE

A tariff classification as vegetables packed in brine held not to preclude a proof of export value in a manner other than as a unitary price for the vegetable and brine. Where, in effect, the importer is responsible for the packing in brine which takes place prior to exportation, export value may be the export price of the vegetable plus the cost of packing.

Court No. 73-1-00128

Port of Nogales

[Judgment for defendant.]

(Decided December 15, 1975)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.
Rex E. Lee, Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

WATSON, Judge: This case involves the dutiable value of seven entries of cucumbers packed in brine which were imported from Mexico in 1971 for use by plaintiff in the making of pickles. This merchandise was classified as other vegetables, packed in brine,[1] and appraised on the basis of export value [2] in amounts ranging from 0.0325 to 0.0348 cents per pound.

Plaintiff claims an export value expressed in terms of a value per hundred pounds depending on the grade of cucumber [3] plus an amount of $15.00 for salt and $24.19 for ice per truck load.

This somewhat unusual dispute centers on the transactions by which the importer obtained the imported merchandise and the manner in which the merchandise was shipped.

The government viewed the transaction giving rise to export value as being a sale from the firm of Pickle-Mex to Arnold Pickle & Olive Co. (hereinafter referred to as Arnold). Plaintiff asserts that the business of the two companies is conducted in such a manner and they are so interrelated that no sales could, or indeed did, take place between them.

Plaintiff argues that the transaction in which export value was generated was the sale of the cucumbers by the Mexican growers to Pickle-Mex. Defendant responds that only *after* these sales was the merchandise placed in brine and, therefore, it could not have an export value which did not reflect its condition as imported and as classified

[1] Item 141.75 of the Tariff Schedules of the United States.
[2] Section 402(b) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956.
[3] $4.99 for grade No. 1, $3.99 for grade Nos. 2 and 3 and $1.50 for grade Nos. 4 and 5.

which was vegetables in brine, not raw vegetables plus packing.[4] Plaintiff replies that the existence of a classification for vegetables in brine does not logically preclude the treatment of the brine as packing for valuation purposes.

Defendant maintains its objection to plaintiff's approach as a distortion of export value into constructed value [5] and a blurring of the distinction between raw cucumbers and cucumbers in brine. Defendant raises additional objections to plaintiff's proof, those of note being a single sale of cucumbers by Pickle-Mex to another United States purchaser and a failure by plaintiff to prove the full packing costs.

Up to a point, plaintiff has persuaded me as to the correctness of its position. However, the incompleteness of its proof as to packing costs causes it to fall short of satisfying its burden of proof.

Arnold is a partnership between the father, uncle and aunt of Byron Arnold, Jr., one of the two partners in Pickle-Mex. Mr. Arnold, Jr. is also the general manager of plaintiff, acting to acquire the cucumbers on behalf of both Arnold and Pickle-Mex. Pickle-Mex optained cucumbers in Mexico for plaintiff—70% from land leased by Pickle-Mex in the name of a Mexican employee and 30% purchased by contract from independent farmers. The evidence establishes to my satisfaction that no sales of specific merchandise took place between Arnold and Pickle-Mex but rather that Pickle-Mex was provided with money by Arnold on a weekly or as-needed basis without any exact settlement of accounts. In effect, Pickle-Mex acted as an agent or even as the alter ego of Arnold in Mexico and there could be no sales transactions between them giving rise to export value.

I am of the opinion, based on the testimony of the inport specialist who made the advisory appraisements ultimately adopted by the district director, that the appraisement was predicated on the existence of sales between Pickle-Mex and Arnold, and upon findings as to the price between them; assumptions which have not been proved erroneous, thereby undermining the correctness of the appraisement.

I am further of the opinion that it is entirely possible for the export value of these cucumbers to be the price at which the growers sold them to Pickle-Mex plus the latter's cost of readying and packing the cucumbers for shipping. But for the absence of proof regarding the expenses incurred by Pickle-Mex in inspecting and grading the cucumbers delivered to it by the growers, I would be satisfied with plaintiff's proof of export value.

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[4] Fresh raw cucumbers would be classifiable under items 135.90 through 135.94, TSUS.

[5] Section 402(d) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956.

From the testimony and particularly the affidavits of the growers, I find that the cucumbers in question were freely sold to Pickle-Mex for export at prices which were arrived at by arm's length negotiation and were the prices at which this merchandise was sold in the principal markets of Mexico for exportation to the United States, which evidently was the only destination for cucumbers of this type.

After the growers delivered the cucumbers to Pickle-Mex five to ten percent of them would be inspected and graded or sized on a special. machine to establish the percentage of the various grades present. After the delivery was weighed, the cucumbers were dumped into a truck whose interior had a polyethylene liner. Salt and water were then added to create the brine in which the cucumbers were shipped. The brine (in which the importation remained for less than 24 hours) served to protect the cucumbers in transit across the border and to obtain for them the more favorable tariff classification of vegetables in brine. This method of transportation did not advance the cucumbers towards "pickleness" but did increase their salt content. The shipping brine was usually discarded when plaintiff began the pickling process.

The immersion in brine was clearly a packing process which in the ordinary determination of export value is added to the price for export to the United States. The fact that the tariff classification describes the importation by reference to the medium in which it is packed does not indicate to me that its value must be proved in a unitary manner as packed. It merely indicates that a certain method of treating or packing vegetables, even provisionally, warrants a rate of duty different from that applied to fresh vegetables.

When a particular type of packing is named in the tariff description I consider it a proper interpretation of section 402(b) to allow proof of the cost of packing as an addition to the export price of the basic article even though as a strictly technical matter the merchandise undergoing appraisement is the combination of basic article and packing. I see this as a lesser anomaly than the alternative conclusion that an article which in all other respects has an export price can not have an export value because it is packed for export by a party which does not sell it for export. Thus, overriding considerations of fairness would lead me, in the present circumstances, to find an export value in the export price of the cucumbers plus the cost of their packing.

Nor, in the face of proof based on scores of transactions relied on by plaintiff, would I be dissuaded from reaching such a conclusion by defendant's proof of a single transaction at a higher price between Pickle-Mex and a Colorado firm. However, I cannot accept the absence of any proof as to the cost of inspecting and grading the cucumbers in question; costs which were clearly part of readying them for

export within the meaning of section 402(b). Absent such proof, plaintiff's case is incomplete and its demonstration of export value is deficient. For that reason the appraised values of this merchandise must be affirmed.

Judgment will be entered accordingly.

(C.D. 4621)

JOHN S. CONNOR, INC. *v.* UNITED STATES

On Cross-Motions for Summary Judgment

Court No. R65/12928

Port of Baltimore

[Plaintiff's motion granted.]

(Dated December 15, 1975)

Busby, Rivkin, Sherman, Levy and Rehm (*Saul L. Sherman* and *Perla M. Kuhn* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Bernard J. Babb*, trial attorney), for the defendant.

WATSON, Judge: This case is before the court on cross-motions for summary judgment and involves the question of the correct dutiable value of a shipment of alkylate,[1] imported from Germany in 1963 for use in the manufacture of detergents.

The merchandise was classified under item 403.60 of the TSUS,[2] a classification which ordinarily would require (in accordance with head note 4 of schedule 4, part 1)[3] that it be appraised on the basis of the American selling price[4] of similar competitive articles. The

[1] The merchandise was described in the pro forma invoice as "Light Alkyl Alkilate-Dodecylbenzene" and "Heavy Alkyl Alkilate-Tridecylbenzene."

[2] Item 403.60 provides for other cyclic organic chemical products having a benzenoid structure.

[3] Headnote 4 reads as follows:

4. The ad valorem rates provided in this part shall be based upon the American selling price, as defined in section 402 or 402a of this Act, of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem rate shall be based upon the United States value, as defined in the said section 402 or 402a.

[4] Section 402(e) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956:

(e) AMERICAN SELLING PRICE.—For the purposes of this section, the American selling price of any article produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the article in condition packed ready for delivery, at which such article is freely sold or, in the absence of sales, offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such article when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

government, however, found no similar competitive article produced in the United States and resorted to constructed value [5] as the basis of valuation. This resulted in a net appraised value of 38.2 cents per pound.

Plaintiff claims that the proper basis of valuation should have been American selling price, i.e., the 10.2 cents per pound price of domestically produced hard alkylates or alternatively the 11 cents per pound price of domestically produced soft alkylates for future delivery.

The fundamental question in this case is whether domestic hard alkylates were competitive articles similar to the imported soft alkylates. Since the sole noteworthy distinction between the two is that the imported soft alkylate could be used to produce a detergent which was biodegradable after use, the question may be more narrowly phrased as whether the attribute of being biodegradable, that is to say, capable of being naturally decomposed, detracts from the otherwise demonstrably similar and competitive nature of the two.

Aside from the characteristic of being biodegradable, the importation could hardly be more in conformity with the requirement of headnote 5 of schedule 4, part 1.[6] In virtually all aspects (and in the words of the headnote) it "* * * accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner." In fact, the imported soft alkylate accomplishes the same result in use in a laundry detergent as does the domestic hard alkylate. The competitive nature of the two could hardly be more direct in that the soft alkylate was specifically developed as an alternative to hard alkylates, was intended for use by detergent manufacturers in producing the same detergent products hitherto produced and did, at a comparable price, enter into a rivalry

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[5] Section 402(d) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956:

(d) CONSTRUCTED VALUE.—For the purposes of this section, the constructed value of imported merchandise shall be the sum of—

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

[6] Headnote 5 reads as follows:

5. For the purposes of this part, any product provided for in this part shall be considered similar to, or competitive with, any imported product which accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner.

with hard alkylates. In fact, the confrontation between the two was so direct that the soft alkylates virtually replaced the hard alkylates.

Defendant stresses the biodegradable nature of the importation as indicating the creation of a new and dissimilar product. While I would not, in any way, lessen the significance of the development of a detergent ingredient which did not pose a pollution threat to this nation's waters, I do not consider the development of the added feature to have altered the fundamental similarity in use between "polluting" and "nonpolluting" detergents and the parallel similarity of use between their "soft" and "hard" alkylate ingredients. The biodegradable quality of the importation is of importance only *after use*, in the disposal phase, a circumstance which I do not think should control a decision as to similarity and competitiveness *in use*. The biodegradable attribute is a desirable additional feature, not a primary function of the importation, and I understand the tariff schedule's emphasis here to be on primary function.

Furthermore, I read the language of headnotes 4 and 5, *supra*, as being relatively unconcerned with unessential or nonfunctional differences between the imported product and the domestic product. This undoubtedly derives from the fact that valuation by American selling price was intended to protect the manufacturers of certain domestic products vis-à-vis similar competing imported products. *Albert F. Maurer Co.* v. *United States*, 51 CCPA 114, 119, C.A.D. 845 (1964).

In the *Maurer* case, certain Brazilian rubber overshoes were held to be similar to certain domestic rubber overshoes despite the importation's superior features. The appellate court stated, at page 120, that "[t]he fact that the modern appearance and possible advantages of the imported rubbers may make them *better* in the eyes of and preferred by some customers only serves to make them *more* competitive and is but added reason to preserve the economic protection contemplated by Congress in enacting section 336."

Although in the present circumstances the effect of utilizing American selling price happens to result in a lower valuation of this merchandise, that is no reason to demand a degree of similarity which surpasses that previously applied and which, when all is said and done, is hardly less than a demand for exactness of identity. In my opinion the requisite similarity and competitiveness exist between the imported alkylates and the domestic alkylates to warrant using the selling price of the domestic product for valuation purposes. See generally, *A. Zerkowitz & Co., Inc.* v. *United States*, 58 CCPA 60, C.A.D. 1005, 435 F. 2d 576 (1970).

Since the evidence herein clearly establishes that the usual wholesale quantity for domestic alkylates was in bulk, i.e., tank car, tank truck or barge, and that the uniform nationwide price at the relevant time was 10.2 cents per pound f.o.b. plant, that is the correct dutiable value for this merchandise. Consequently, it is not necessary to discuss plaintiff's alternative ground for valuation based on the price for future delivery of domestic soft alkylates.

It is therefore,

ORDERED that plaintiff's motion for summary judgment be, and the same hereby is, granted, and the merchandise involved herein be appraised on the basis of American selling price under section 402(e) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, at a value of 10.2 cents per pound.

(C.D. 4622)

CRAIG CORPORATION *v.* UNITED STATES

Foot switches

FOOT SWITCHES—"MORE THAN" DOCTRINE

The imported foot switch is not more than a switch. The presence of components in the foot switch other than the exact part which does the actual switching does not make the importation more than a switch since the other components are all directly related to the operation of the switch.

Court No. 72-2-00270

Port of Los Angeles

[Judgment for defendant.]

(Decided December 18, 1975)

Stein and Shostak (*James F. O'Hara* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Andrew P. Vance and John J. Mahon*, trial attorneys), for the defendant.

WATSON, Judge: In this action plaintiff contests the classification as switches[1] of certain imported foot switches used as optional

[1] Item 685.90 of the Tariff Schedules of the United States, as modified by T.D. 68-9, dutiable at the rate of 12% ad valorem.

accessories to stop and start tape recorders and claims they are properly classifiable as parts of tape recorders.[2] Plaintiff contends[3] these articles are more than switches in that, in addition to the "microswitch" which is at the core of their operation, they have as components a housing, pedal, springs, an electric cord and plug and a strain device to protect the electric cord. Since these other components are all primarily and directly related to the importation's function as a switch, this argument is entirely without merit.

Plaintiff's argument that the primary function of these articles is to control a tape recorder as opposed to controlling the flow of electricity in an electrical circuit, is a distinction without a difference. In their function vis-à-vis the tape recorder, these switches make or break electrical circuits within the clear meaning of the classified provision.

Finally, I derive no support for the proposition that these foot switches are more than "switches" from the case of *Pacific Instruments Corp.* v. *United States*, 64 Cust. Ct. 520, C.D. 4028 (1970). Although the conclusion was expressed therein that certain foot controls and typewriter controls were "more than" switches, the underlying reasons were less than completely revealed and there is no evidence regarding the similarity of those devices to the articles herein. Furthermore, the *Pacific Instruments* case was decided under the markedly different language of the Tariff Act of 1930.

In light of the above, plaintiff has failed to prove the correctness of its claims which must, consequently, be overruled.

Judgment will be entered accordingly.

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[2] Item 685.40 of the TSUS, as modified, *supra*, dutiable at the rate of 8% ad valorem.

[3] Plaintiff's claim for classification as electrical articles, etc. under item 688.40 of the TSUS, as modified, *supra*, was abandoned and is, accordingly, dismissed.

(C.D. 4623)

CRAIG CORPORATION *v.* UNITED STATES

Microphones

MICROPHONES—"MORE THAN" DOCTRINE

The presence of an "on-off" switch on the imported microphones is held not to make them more than microphones in that the switch is primarily an adjunct to the use of the microphone with a tape recorder and not a separate remote control device.

Court No. 72-5-00966

Port of Los Angeles

[Judgment for defendant.]

(Decided December 18, 1975)

Stein and Shostak (*James F. O'Hara* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Andrew P. Vance and John J. Mahon*, trial attorneys), for the defendant.

WATSON, Judge: This case places in issue the tariff consequences of the presence of an "on-off" switch on certain imported microphones designed for use with tape recorders. Plaintiff claims that the presence of the switch makes them *more than* microphones and precludes defendant's classification of the importations as microphones under item 684.70 of the Tariff Schedules of the United States, as modified by T.D. 68-9.[1] Plaintiff seeks classification of these articles as parts of tape recorders[2] under item 685.40 of the TSUS, as modified, *supra*.[3]

Although the importations are indisputably parts of tape recorders, General Interpretative Rule 10(ij) states that in the tariff schedules a provision for an article *as a part* does not prevail over a *specific provision* for such part. Thus, if the importations are microphones, they will be classified as such even though they are also parts of tape recorders.

I have not been persuaded by plaintiff that the presence of the on-off switch on these microphones makes them other than microphones

[1] As classified the rates of duty would be 12, 10 or 9 percent ad valorem, depending on the dates of entry.

[2] Plaintiff's claim for classification as electrical articles, etc. under item 688.40 of the TSUS, as modified, *supra*, was abandoned and is, accordingly, dismissed. Plaintiff's claim as to microphone model No. 2408 in entry 204802 having been abaondoned is dismissed as well.

[3] As claimed the rates of duty would be 9, 8 or 6.5 percent ad valorem, depending on the dates of entry.

since I view its presence as being, for the most part, auxiliary to the use of the microphones.

After the microphone is attached to the tape recorder, the switch must be in the "on" position in order for the tape recorder to work at all. The switch can then be used as a remote control to stop and start recording (assuming the main controls are already in the record mode) and to stop and start playback of recorded material (assuming the main controls are already in the playback mode).

In my opinion, the aforementioned capabilities of the switch are all derived from its fundamental role as an adjunct to the use of the microphone in recording, as a convenience in stopping and starting the recording process without resort to the main controls. In my view, the testimony will not support the proposition that the switch functions as a remote control device in a significant manner, separate and apart from its relation to the operation of the microphone. Consequently, the presence of the switch does not indicate the existence of either a genuine multifunctional article or an article which is more than a microphone.

In this respect, the switch under discussion is like the flashlight component which did not make the importation more than a screwdriver in *Astra Trading Corp.* v. *United States*, 56 Cust. Ct. 555, C.D. 2703 (1966), or the additional capability for coordination with X-ray apparatus and operation by automatic remote control which did not make the importation more than a syringe in *Schick X-Ray Co., Inc.* v. *United States*, 64 Cust. Ct. 430, C.D. 4013 (1970).

The switch, in its relation to the microphone, is not comparable to the gear assembly and motor combination which was held to be more than a motor in *United States* v. *The A. W. Fenton Co., Inc.*, 49 CCPA 45, C.A.D. 794 (1962). Nor can any support for plaintiff's position be derived from the case of *Edo Commercial Corp. et al.* v. *United States*, 65 Cust. Ct. 30, C.D. 4049 (1970). In *Edo* a claim that the importations were microphones could not be maintained in the face of evidence that the devices in question had *two coequal functions;* one, the conversion of sound to electrical energy associated with microphones and the other, the conversion of electrical energy to sound associated with loudspeakers. Nothing approaching that equality of function has been proven here.

For the reasons discussed above, these importations were properly classified as microphones rather than as parts of tape recorders.

Judgment will be entered accordingly.

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Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *December 22, 1975.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/664	Watson, J. December 16, 1975	J. I. Case Company	75-5-01380	Item 664.05 5%	Item 692.30 Free of duty	Agreed statement of facts	Norfolk Parts of tractors commercially used in agriculture
P75/665	Watson, J. December 16, 1975	Mego Corp.	70/60332	Item 737.90 31%	Item 737.55 18.5%	Agreed statement of facts	New York Toy alphabet building blocks
P75/666	Watson, J. December 16, 1975	Tragacanth Importing Corp.	73-9-02515	Item 432.00 6%	Item 188.38 Free of duty	Judgment on the pleadings	Philadelphia "Goma de Garrofin 'Tragacom HG-2' " (locust bean gum)

P75/667	Newman, J. December 16, 1975	National Silver Co.	67/17079	Item 927.53 3¢ ea. + 67.5%	Item 650.11 or 650.41 1¢ ea. + 17.5%	National Silver Company v. U.S. (C.D. 4582)	New York Stainless steel flatware (knives and forks)
P75/668	Watson, J. December 17, 1975	New York Merchandise Co., Inc.	68/31409, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Merchandise in c.v. of plastic
P75/669	Watson, J. December 17, 1975	Norman Industries, Inc.	72-5-01190	Item 748.20 23.5%	Item 774.60 11.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles; New York Merchandise in c.v. of plastic
P75/670	Richardson, J. December 18, 1975	United China & Glass Company	69/18196, etc.	Item 651.75 Various ad valorem equivalents set out in schedule A, attached to decision and judgment, in column headed Assessed Rate	Item 651.75 Appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	New Orleans Flatware sets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P75/671	Watson, J. December 18, 1975	Interchemical Corp. et al.	68/16530, etc.	Item 409.00 45% + 7¢ per lb.; or 40% + 6.3¢ per lb.	Item 405.25 18% + 2.8¢ per lb.; or 16% + 2.5¢ per lb.	Volkswagen of America, Inc. v. U.S. (C.D. 4348, aff'd C.A.D. 1115)	New York Benzenoid alkyd resin paints
P75/672	Newman, J. December 18, 1975	Matsushita Electric Corp. of America	75-7-01814	Item 685.30 6.5%	Item 678.50 5%	Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	Seattle Stereo radio phonograph w/8-track player
P75/673	Newman, J. December 18, 1975	Stanley Roberts, Inc.	65/12832	Items 651.75/ 927.53 82.575%	Items 651.75/ 650.49 At highest compound rate applicable to any article in sets (1¢ ea. + 17.5%, forks), the specific portion of the compound rate being applied once to each article in sets	U.S. v. Charberjoy Distributors, Inc. (C.A.D. 1068) Import Associates of America et al. (C.A.D. 961)	New York Sets of knives, forks and spoons
P75/674	Newman, J. December 18, 1975	Webcor Electronics, a/k/a Webcor Electronics, Division of U.S. Industries, Inc.	73-8-02334	Item 685.30 8% or 6.5%	Item 678.50 6% or 5%	Judgment on the pleadings	New York WFX 257 AM/FM/MPX stereo receiver with 8-track stereo tape player; 12-8300 AM/FM/MPX stereo receiver with 8-track player

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/316	Watson, J. December 16, 1975	Isaac B. Cohen & Sons et al.	R61/22964, etc.	American selling price	Set forth on schedule, attached to decision and judgment, under caption claimed values per pair	Agreed statement of facts	New York Footwear
R75/317	Watson, J. December 16, 1975	New York Merchandise Co., Inc.	R61/4271	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Los Angeles Footwear
R75/318	Watson, J. December 16, 1975	Henry Pollak, Inc.	R60/13680	American selling price	Set forth under column "Unit Value Per Pair" on schedule "A", attached to decision and judgment	Agreed statement of facts	New York Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R75/319	Re, J. December 16, 1975	M. S. Cowen Co.	R62/12103, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R75/320	Re, J. December 16, 1975	Patrick & Graves	R58/20211, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R75/321	Watson, J. December 17, 1975	J. M. Rodgers Co., Inc.	R60/19860, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R75/322	Watson, J. December 17, 1975	J. M. Rodgers Co., Inc.	R61/8526, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear

R75/323	Watson, J. December 17, 1975	J. M. Rodgers Co., Inc.	R61/9262, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R75/324	Watson, J. December 18, 1975	Bruce Duncan Co., Inc., a/c Technical Marketing Associates, Inc.	R63/10709	American selling price	$1.52 less 6% per pair	Agreed statement of facts	Los Angeles Footwear
R75/325	Watson, J. December 18, 1975	Niagara Trading Co., Inc.	R61/20125	American selling price	$4.85 less 6% per pair	Agreed statement of facts	Portland, Oreg. Footwear
R75/326	Watson, J. December 18, 1975	J. M. Rodgers Co., Inc.	R59/10990, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R75/327	Watson, J. December 18, 1975	J. M. Rodgers Co., Inc.	R61/14363, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear

Decision on Motion for Rehearing

DECEMBER 11, 1975

Suwannee Steamship Company *v.* United States, Court No. 70/2603.—MEMORANDUM OPINION.—C.R.D. 73–3. Motion of plaintiff for rehearing denied.

Petition for Rehearing Before the United States Court of Customs and Patent Appeals

DECEMBER 3, 1975

APPEALS 75–9 and 75–10.—Dana Perfumes Corp. *v.* United States; United States *v.* Dana Perfumes Corp.—TOILET PREPARATIONS (CANOE COLOGNE), REAPPRAISEMENT OF—GENERAL EXPENSES—COST OF PRODUCTION.—A.R.D. 320 modified November 13, 1975. C.A.D. 1162. Petition filed by Dana Perfumes Corp.

Appeal to United States Court of Customs and Patent Appeals

APPEAL 76–5.—United States *v.* Mego Corp.—VINYL SPONGE LEATHER GLOVES—VINYL LEATHER BOXING GLOVES—TOYS, OTHER—BASEBALL GLOVES—BOXING GLOVES—TSUS. Appeal from C.D. 4614.

In this case merchandise described on the invoice as a "vinyl sponge leather glove" and a "vinyl leather boxing glove" was assessed at 21 percent ad valorem under the provision in item 737.90 of the Tariff Schedules of the United States, as modified by T.D. 68–9, for other toys not specially provided for. Plaintiff-appellee claimed that the "vinyl sponge leather glove" was properly dutiable at 15 percent under the provision in item 734.54, as modified, for baseball gloves; or at 9 percent under the provision in item 735.05, as modified, for other gloves specially designed for use in sports; or at 12 percent under the provision in item 735.20, as modified, for game, sport, athletic or playground equipment. Plaintiff-appellee claimed that the "vinyl leather boxing glove" was dutiable at 9 percent under the provision in item 735.05, as modified, for boxing gloves; or at 12 percent under the provision in item 735.20, *supra*. The Customs Court held: (1) the "vinyl sponge leather glove" was similar in all material respects to the junior edition baseball glove in the incor-

porated case of *New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 38, C.D. 3671, 294 F. Supp. 971 (1959), and as such was properly classifiable as a baseball glove under item 734.54, *supra;* (2) the "vinyl leather boxing glove" was a junior edition boxing glove and was, therefore, properly classifiable under item 735.05, *supra*, as a boxing glove.

It is claimed that the Customs Court erred in sustaining the protest claims under items 734.54 (baseball gloves) and 735.05 (boxing gloves) and in entering judgment in favor of the appellee; in not overruling the protest and in not entering judgment in favor of the defendant-appellant; in finding and holding that the sample of the vinyl sponge leather gloves demonstrated that the imported gloves were not toys, but instead, similar in all material respects to those in the incorporated case; in not finding and holding that the vinyl sponge leather gloves, as represented by the sample, were flimsily constructed; in failing to find that the vinyl sponge leather gloves were not of such character and quality as is ordinarily used or suitable for use, in the serious pursuit of the organized sport of baseball; in failing to properly interpret and apply the legislative history of the TSUS item numbers upon which the classification and the appellee's claims were predicated, with respect to the vinyl sponge leather gloves; in finding and holding that the sample of the vinyl leather boxing gloves demonstrated that the imported gloves were substantial in nature and not flimsy in construction; in failing to find that the vinyl boxing gloves were not of such character and quality as is ordinarily used or suitable for use, in the serious pursuit of the organized game of boxing; in failing to properly interpret and apply the legislative history of the TSUS item numbers upon which the classification of the appellee's claims were predicated, with respect to the vinyl leather boxing gloves; and in not finding and holding that the serious pursuit of the organized sport of boxing is more than merely a child hitting a bag or another child, but rather, equivalent to an adult-organized program, with specified written rules.

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